

Hearing Date: April 13, 2011 at 10:00 a.m. (ET)

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	
	:	Chapter 11
LEHMAN BROTHERS HOLDINGS INC., et al.,	:	
	:	Case No. 08-13555 (JMP)
Debtors.	:	
	:	(Jointly Administered)
	:	

**RESPONSE OF THE LIQUIDATORS OF LEHMAN BROTHERS AUSTRALIA  
LIMITED TO DEBTORS' MOTION PURSUANT TO SECTION 105 OF THE  
BANKRUPTCY CODE AND RULE 7026 OF THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE FOR AUTHORIZATION TO ESTABLISH AND  
IMPLEMENT PROCEDURES IN CONNECTION WITH DISCOVERY RELATED TO  
PLAN CONFIRMATION**

Stephen Parbery and Neil Singleton, in their capacity as the court-appointed Liquidators (the "Liquidators") of Lehman Brothers Australia Limited (in liquidation), a company organized under the laws of Australia and a wholly-owned, indirect subsidiary of Lehman Brothers Holdings Inc. ("LBHI"), one of the Debtors herein ("LB Australia"), a creditor in the chapter 11 cases (the "Chapter 11 Cases") of LBHI and each of its affiliated chapter 11 debtors in possession (collectively,

the “Debtors”), hereby file this Response to the Debtors’ Motion Pursuant to Section 105 of the Bankruptcy Code and Rule 7026 of the Federal Rules of Bankruptcy Procedure for Authorization to Establish and Implement Procedures in Connection with Discovery Related to Plan Confirmation [Docket No. 14867] (the “Motion”, as amended by the Notice of Amended Order Establishing Schedule in Connection With Discovery Related to Plan Confirmation and Other Issues [Docket No. 15539] and the Notice of Second Amended Order Establishing Schedule in Connection With Discovery Related to Plan Confirmation and Other Issues [Docket No. 15682], the “Discovery Procedures”).<sup>1</sup> In support of this Response, the Liquidators respectfully state as follows:

### **BACKGROUND**

1. On September 26, 2008 and pursuant to § 436a of the *Corporations Act* 2001 (Cth), the directors of LB Australia appointed Mr. Parbery and Mr. Singleton as Joint and Several Administrators of LB Australia. On October 2, 2009, Justice Rares of the Federal Court of Australia ordered that LB Australia be placed in liquidation (proceeding no. NSD 538 of 2009). The Liquidators have timely filed proofs of claim in these Chapter 11 Cases. LB Australia is a signatory to the cross-border insolvency protocol approved by the Court on June 17, 2009 [Docket No. 4020] (the “Cross-Border Protocol”).

### **RESPONSE**

2. The Discovery Procedures provide that they “shall control any and all discovery . . . in connection with Plan Issues arising in connection with the prosecution of or objection to any Plan or Alternative Plan.” (Discovery Procedures, ¶ 1.) “Plan Issues” is defined as any “contested issues of fact and law” in connection with the Plan or any Alternative Plan.

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

3. Section 6.5(b) of the First Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors [Docket No. 14150] (the “Plan”) provides that, unless a foreign affiliate and the Debtors agree to the allowed amounts of the foreign affiliate’s claims, the Plan and Disclosure Statement shall constitute a motion, pursuant to Section 502(c) of the Bankruptcy Code, to estimate the foreign affiliate’s claim at \$1.00 for voting, distribution and reserve purposes.

4. A plain reading of those provisions leads to the conclusion that allowance or estimation of LB Australia’s claims would be included in the term “Plan Issues” and that discovery related to those claims must be conducted pursuant to the Discovery Procedures.<sup>2</sup>

5. Consequently, under the current terms of the Discovery Procedures and Section 6.5(b) of the Plan, LB Australia may be forced to litigate the amount and validity of its intercompany claims as part of the confirmation of the Plan. It would appear to be particularly onerous for LB Australia to be forced to participate in the complex Plan discovery process to resolve its claims. The issues relevant to the resolution of LB Australia’s claims may have no connection to the factual issues relevant to confirmation of the Plan.

6. The Liquidators hope to be able to work with the Debtors to obtain the necessary modifications to the Discovery Procedures as proposed. To the extent those discussions are not successful, the Liquidators respectfully request that discovery related to allowance and estimation of claims be excluded from the Discovery Procedures.

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<sup>2</sup> In addition, Section 6.5(b) of the Plan may be in conflict with Section 9 of the Cross-Border Protocol, which provides for the Debtors’ estates to allow intercompany claims as shown on their respective books and records, and provides for its own dispute resolution procedure.

**RESERVATIONS OF RIGHTS**

7. The Liquidators reserve all their rights relating to the claims of LB Australia, including but not limited to the rights to dispute any objection to such claims, and to object to confirmation of any plan of liquidation proposed in these Chapter 11 Cases.

8. For the foregoing reasons, the Liquidators respectfully request that the Court (a) modify the Discovery Procedures in a manner consistent with this Response, and (b) grant such other and further relief as the Court deems proper.

Dated: April 8, 2011  
New York, New York

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